

6-21-1976

Aug 4 1976
Date
Fee \$ 80 -

ICC Washington, D. C.

RECORDATION NO. 8385-2 Filed & Recorded

AUG 4 1976-1 20 PM

INTERSTATE COMMERCE COMMISSION

The Honorable Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO. 8385-A Filed & Recorded

AUG 4 1976-1 20 PM

INTERSTATE COMMERCE COMMISSION

My dear Mr. Oswald:

Enclosed for filing with the Interstate Commerce Commission are 15 executed Counterparts of the following documents, (10 Counterparts of document 2).

1. Amendment and Restatement of Conditional Sale Agreement dated as of July 30, 1976 to the Conditional Sale Agreement dated as of June 22, 1976, between FMC CORPORATION, a Delaware corporation ("Builder"), 200 East Randolph Drive, Chicago, Illinois 60601, and FIRST SECURITY BANK OF UTAH, N.A., 79 South Main Street, Salt Lake City, Utah 84110, a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation, 200 East Randolph Drive, Chicago, Illinois 60601.

2. Lease of Railroad Equipment dated as of June 22, 1976 between SSI RAIL CORP., a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("Lessee") and FIRST SECURITY BANK OF UTAH, N.A. ("Lessor").



RECORDATION NO. 8385-B Filed & Recorded

AUG 4 1976-1 20 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED

AUG 4 1 15 PM '76

I. C. C.
FEE OPERATION BR.

August 3, 1976

RECORDATION NO. 8385-A Filed & Recorded

AUG 4 1976-1 20 PM

INTERSTATE COMMERCE COMMISSION

The Honorable Robert L. Oswald
Page 2
August 3, 1976

3. Agreement and Assignment dated as of July 30, 1976 between Builder, and MANUFACTURERS HANOVER TRUST COMPANY, a New York banking corporation, 350 Park Avenue, New York, New York 10022 ("Assignee").

4. Assignment of Lease and Guaranty dated as of July 30, 1976 by Lessor to Assignee.

The above documents cover the following railroad equipment with the A.A.R. mechanical designation of "XM."

- 100 70-ton boxcars built by FMC Corporation and numbered APA 1850 through 1949 inclusive.
- 100 100-ton box cars built by FMC Corporation and numbered APA 1700 through 1799 inclusive.

Each boxcar is plainly, distinctly, permanently and conspicuously marked on each side in letters not less than one inch in height as follows: Owned by a Company under a Security Agreement filed under the Interstate Commerce Act, Section 20."

The obligations of Lessee under the Lease of Railroad Agreement are guaranteed by ITEL Corporation, One Embarcadero Center, San Francisco, California 94111, the parent company of Lessee.

Also enclosed is my personal check in the sum of \$80.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document..

Please return all additional copies of the enclosed counterparts not required by the Interstate

The Honorable Robert L. Oswald
Page 3
August 3, 1976

Commerce Commission to Allen H. Harrison, Jr. of Wilmer
Cutler & Pickering, who will be delivering this letter
on our behalf.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Martin D. Goodman", written over a series of horizontal lines.

Martin D. Goodman
Secretary

MDG:bsk
Enclosures

6-2174032

REC'D
Date **AUG 4 1976**
Fee \$ **80 -**

ICC Washington, D. C.

RECORDATION NO. **8385-B** Filed & Recorded

AUG 4 1976 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

The Honorable Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO. **8385-A** Filed & Recorded

AUG 4 1976 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

Re: Conditional Sale Agreement made as
of June 22, 1976, filed with the
ICC on June 28, 1976 at 11:20 a.m.
and assigned recordation number 8385

My dear Mr. Oswald:

Enclosed for filing with the Interstate Commerce Commission are 15 executed Counterparts of the following documents. (10 Counterparts of document 2).

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RECORDATION NO. **8385-B** Filed & Recorded

AUG 4 1976 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED

AUG 4 1 15 PM '76

I. C. C.
FEE OPERATION BR.

August 3, 1976

RECORDATION NO. **8385-A** Filed & Recorded

AUG 4 1976 - 1 20 PM

INTERSTATE COMMERCE COMMISSION

The Honorable Robert L. Oswald
Page 2
August 3, 1976

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The obligations of Lessee under the Lease of Railroad Agreement are guaranteed by ITEL Corporation, One Embarcadero Center, San Francisco, California 94111, the parent company of Lessee.

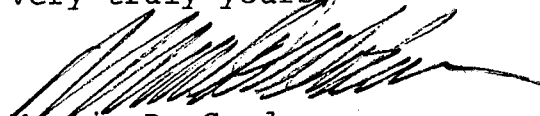
Also enclosed is my personal check in the sum of \$80.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return all additional copies of the enclosed counterparts not required by the Interstate

The Honorable Robert L. Oswald
Page 3
August 3, 1976

Commerce Commission to Allen H. Harrison, Jr. of Wilmer
Cutler & Pickering, who will be delivering this letter
on our behalf.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Martin D. Goodman', with a long, sweeping horizontal stroke extending to the right.

Martin D. Goodman
Secretary

MDG:bsk
Enclosures

DUPLICATE

RECORDATION NO. 8385-B Filed & Recorded

AUG 4 1976 1 02 PM

INTERESTY CONFERENCE COMMISSION

LEASE OF RAILROAD EQUIPMENT dated as of June 22, 1976, between SSI RAIL CORP., a Delaware corporation (hereinafter called the Lessee), and FIRST SECURITY BANK OF UTAH N.A., a national banking association, not in its individual capacity but solely as Trustee under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with FMC FINANCE CORPORATION (said Trust Company so acting hereinafter called the Lessor; said FMC Finance Corporation being hereinafter called the Beneficiary).

WHEREAS, the Lessor has entered into a conditional sale agreement dated as of the date hereof, as amended and restated as of July 30, 1976, with FMC Corporation (hereinafter called the Builder) (such agreement, as so amended and restated, being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS, the Builder is assigning its interests in the Security Documentation pursuant to an Agreement and Assignment dated as of July 30, 1976 (hereinafter called the Assignment) to a short-term investor (said investor being hereinafter together with its successors and assigns called the Vendor);

WHEREAS, the parties are diligently seeking a long-term investor to provide long-term debt funds for this transaction, but have not yet found such an investor;

WHEREAS, the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS, ITEL Corporation (hereinafter called the Guarantor) is guaranteeing Lessee's performance of its payment obligations hereunder pursuant to a Guaranty Agreement dated as of the date hereof with the Lessor (hereinafter called the Guaranty Agreement); and

WHEREAS, all right, title and interest of Lessor under this Lease and under the Guaranty Agreement is being assigned by Lessor to Vendor pursuant to an Assignment of Lease and Guaranty dated as of July 30, 1976 (hereinafter called the Lease and Guaranty Assignment), as security for Lessor's obligations to Vendor under the Conditional Sale Contract and the Assignment;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept

and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

Section 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

Section 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee or an Agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 2 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with Section 5 hereof, whereupon, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

Section 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 61 consecutive quarterly payments in arrears payable on September 1, December 1, March 1, and June 1 of each year commencing September 1, 1976. The rental payment payable on September 1, 1976, shall be in an amount equal to .030768% of the Purchase Price (as defined in the Security Documentation) of each Unit then subject to this Lease for each day elapsed from the date such Unit is settled for under the Security Documentation to and including September 1, 1976. The next 60 rental payments shall each be in an amount equal to 2.80757% of the Purchase Price of each Unit then subject to this Lease. In addition to the above payments, Lessee shall pay to Lessor, on the date of the Assignment, an amount equal to .03125% of said Purchase Price of the Units for each day elapsed from July 23, 1976 until the date of the Assignment.

If any of the quarterly rental payment dates referred to above is not a business day, the due date of the quarterly rental payment otherwise payable on such date shall be extended to the next succeeding business day and interest on the amount of such payment at the rate of 10-3/4% per annum shall be payable during such extension. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions at the place of payment are authorized or obligated to remain closed.

Prior to the Vendor being added to this transaction, all payments hereunder shall be made to Lessor. Upon such addition of Vendor, the Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this Section 3 and in Section 7 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 A.M., local time, on the date such payment is due.

Notwithstanding any of the above, Lessee will diligently seek a long-term investor to become the Vendor, as defined in the second recital on Page 1 of this Lease. If, for any reason, the debt rate to be paid to said Vendor is a rate other than 10-3/4% per annum, then the rental payments hereunder shall be adjusted to equal that percentage of the Purchase Price of each Unit then subject to this Lease opposite the applicable debt rate set forth below:

<u>Debt Rate</u>	<u>Payment % Cost</u>
8.75%	2.56452
9.75%	2.68422
10.75%	2.80757
11.75%	2.93508
12.75%	3.06617

(Based on 70%/30% debt to equity relationship, investment tax credit and depreciation for the account of Beneficiary, assuming 60 quarterly payments in arrears.)

If the applicable debt rate is not expressly set forth above, the applicable percentage of the Purchase Price shall be interpolated or extrapolated from the percentages above by using the assumptions and facts used in arriving at the above percentages.

Notwithstanding anything to the contrary contained in this Lease, the Lessee agrees that the quarterly rental payments payable hereunder, both before and after giving effect to any adjustments provided for in this Section 3, shall each be in an amount which is sufficient to pay in full the amounts payable by Lessor pursuant to Article 3 of the Security Documentation (other than subparagraph (a) of the first paragraph of said Article 3).

Section 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of Sections 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to Section 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under Section 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Section 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one-half inch in height, the words "Owned by a Company under a Security Agreement Filed under the Interstate Commerce Act, Section 20c," with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control

or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates or sublessees.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

In the event of any assignment or successive assignments by the Vendor of security title to the Equipment and of the Vendor's rights under the Security Documentation with respect thereto, the Lessee will, whenever requested by said assignee, change the markings on each side of each unit of the Equipment so as to indicate the security title of such assignee to the Equipment, such markings to be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Lease shall be borne by the Lessee and, in the event of any assignment of less than all such Equipment, such cost shall be borne by such assignee.

Section 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Beneficiary) to the Lessor for collection or other charges and will be free of expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Beneficiary) to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States Federal income tax payable by the Beneficiary in consequence of the receipt of payments provided for herein and other than the aggregate of all state or local taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and locality in which the Beneficiary has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied

or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Beneficiary, or the Vendor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, the Beneficiary and the Vendor, adversely affect the Lessor's and Vendor's title to and interest in the Equipment or the title, property or rights of the Lessor or Beneficiary hereunder or of the Vendor under the Security Documentation. The Lessee agrees to give the Lessor and the Beneficiary notice of such contest within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor or the Beneficiary directly and paid by the Lessor or the Beneficiary, the Lessee shall reimburse the Lessor or the Beneficiary on presentation of an invoice therefor; provided, however, that the Lessor or the Beneficiary shall have given the Lessee written notice of such imposition prior to such payment.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this Section 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor, the Beneficiary and the Vendor in such Units; provided, however, that the Lessor and, if applicable, the Beneficiary shall, with respect to any state or political subdivision thereof of the United States of America, file required returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, and remit the amount thereof and the Lessee shall reimburse the Lessor or the Beneficiary promptly upon demand for the amount of such taxes, fees and charges except as provided above.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Section 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this Section 6, the Lessor and the Beneficiary hereby authorize the Lessee to act in their names and on their behalf; provided, however, that the Lessee shall indemnify and hold the Lessor and the Beneficiary harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor or the Beneficiary, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor and the Beneficiary of the Lessee's performance of its duties under this Section 6. The Lessee shall also furnish promptly upon request such data as the Lessor or the Beneficiary reasonably may require to permit the Lessor's and the Beneficiary's compliance with the requirements of taxing jurisdictions.

Section 7. Maintenance, Casualty Occurrences; Insurance.
The Lessee agrees that, at its own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in Section 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent

to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the Schedule in Item 1 of Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in Section 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States Government (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to Section 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said Section 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor, the Beneficiary, or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor, the Beneficiary or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor or the Beneficiary.

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee or its sublessee or sublessees will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance in respect to the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it; provided that in no event shall the amount of such property insurance be less than 120% of the Conditional Sale Indebtedness (as defined in the Security Documentation). Such property and public liability insurance shall name Lessor and Vendor as additional insureds and loss payees, and shall provide that it cannot be cancelled except upon 30 days' prior written notice to Lessor and Vendor. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

Section 8. Reports. On or before March 31 in each year, commencing with the calendar year 1977, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by Section 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

Lessee will send to Lessor and Vendor copies of the quarterly and annual reports to shareholders of Guarantor within 10 days after mailing or

other distribution to shareholders, and Forms 10-Q and 10-K filed by Guarantor with the Securities and Exchange Commission (the "S.E.C.") within 10 days of said filing. If at any time during the term of this Lease, Lessee should prepare any such report for its shareholders or for the S.E.C., Lessee will send Lessor and Vendor a copy of such report within 10 days after preparation.

Notwithstanding anything to the contrary contained in this Lease, the Lessee agrees that the amount of the Casualty Value payable hereunder with respect to any Unit shall be in an amount which is sufficient to pay in full the total amount payable with respect to such Unit under the terms of Article 11 of the Security Documentation.

Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Article 9 of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to

the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessor, except to the extent that such additions, modifications, and improvements are made in order to comply with the first sentence of this paragraph.

Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, (ii) the cost of which is included in the Purchase Price of such Unit or (iii) which are required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documentation) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Beneficiary and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of, or the occurrence of a default, an event of default or an Event of Default under, the Security Documentation, the Assignment, the Lease and Guaranty Assignment or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, whether as the result of negligence, the application of the law of strict liability, or otherwise, except as otherwise provided in Section 14 of this Lease and

except as to the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

In the event that Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this Section 9, the Lessee shall pay such additional amounts to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

Without limitation of the generality of the foregoing provisions of this Section 9, the Lessee agrees to pay promptly when due, the reasonable compensation and expenses of the Lessor, as trustee under the Trust Agreement, all recordation and filing expenses, and the legal fees and disbursements incurred by Lessor and the Vendor in connection with the transactions contemplated by this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

Section 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in Section 3, 6, 7 or 13 hereof, and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. any representation or warranty made by the Lessee herein or in any document or certificate delivered by the Lessee in connection herewith shall prove to be incorrect at any time in any material respect;

D. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

E. any proceeding shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or of the Guarantor under the Guaranty Agreement, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease or the Guarantor under the Guaranty Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 30 days after such proceeding shall have been commenced, whichever shall be earlier;

F. an event of default in the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

G. the Guaranty Agreement shall, for any reason, cease to be in full force and effect, or the Guarantor shall disclaim any of its obligations thereunder;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right

to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Beneficiary, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of an 8% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated plus (B) an amount which, after deduction of all taxes required to be paid by the Beneficiary in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Beneficiary, be equal to all or such portion of the Investment Credit (as defined in Section 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Beneficiary as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in Section 16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Beneficiary's net return under this Lease to be equal to the net return that would have been available to the Beneficiary if it had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in Section 16 hereof) which were lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in Section 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Beneficiary for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales

value of such Unit as such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

Section 11. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written

notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on such tracks as the Lessor reasonably may determine or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event any Unit is not assembled, delivered and stored, as hereinabove provided within 60 days after such termination, the Lessee shall pay to the Lessor for each day thereafter an amount equal to .030768% of the Purchase Price of such Unit.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit at the time. Lessee waives any and all rights to notice and to a hearing with respect to the right of repossession of the Units by the Lessor upon an Event of Default.

Section 12. Assignment; Possession and Use. The Lessee acknowledges that this Lease is being assigned to the Vendor pursuant to the Lease and Guaranty Assignment, and Lessee hereby consents to the provisions of such Lease and Guaranty Assignment. All the rights of the Lessor hereunder (including, but not limited to, the rights under Sections 6, 7, 9 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiary's and the Lessor's assigns (including the Vendor).

Notwithstanding anything contained herein to the contrary, so long as the Lessee shall fully perform its obligations under this Lease and such performance is in accordance with the terms of this Lease, the Lessee shall be entitled to the possession, use and quiet enjoyment of the Units in accordance with the terms of this Lease, and may sublease the Units to others, provided, however, that the rights of any such sublessee shall be subject and subordinate to, and any such sublease shall be made expressly subject and subordinate to (except as to that certain Lease Agreement dated as of June 1, 1976, by and between Lessee and The Apache Railway Co. ("Apache")), all the terms of this Lease and shall include appropriate provisions for the maintenance of any Units subleased thereby, for insuring the Units subleased against total loss or constructive total loss in amounts and against risks customarily insured against by railroad companies on similar equipment, and for the avoidance of such sublease or use of any Units thereunder if the same would result in the Beneficiary losing any portion of the Investment Credit or the ADR Deduction or the Interest Deduction (as defined in Section 16 hereof) which would otherwise be available to the Beneficiary. No sublease of any Units shall in any way discharge or diminish any of the Lessee's obligations to the Lessor or Beneficiary hereunder. The Lessee may receive and retain compensation for such use of any of the Units by other railroads in accordance with this paragraph.

The Lessee shall use or cause the use of the Units only in the United States, except that the Lessee may from time to time use or cause to be used in Canada any Units, provided that the Lessee shall not use any Unit or cause, permit, or otherwise allow any Unit to be used in service involving the regular operation and maintenance thereof outside the United States of America. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor, the Beneficiary or the Vendor or resulting from claims against the Lessor, the Beneficiary or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Beneficiary, or the Vendor therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of any of the Units, except to the extent permitted by the provisions of this Section 12.

No other provision of this Section 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to the Guarantor, or a wholly-owned subsidiary of the Guarantor or a subsidiary or subsidiaries thereof, to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee

hereunder and under its consent to the Lease and Guaranty Assignment into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and in the reasonable opinion of Beneficiary and Vendor is financially reliable.

Section 13. Renewal Option; Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 120 days prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of no fewer than the number of Units then under a sublease by the Lessee to a third-party sublessee, for three additional two-year periods commencing on the scheduled expiration of the original term or any extended term of this Lease, as the case may be, at a "Fair Market Rental" payable in quarterly payments on December 1, March 1, June 1 and September 1 in each year of such extended term.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 20 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 10 business days after such notice is given, each party shall appoint an independent appraiser within 10 business days after such notice is given, and the two appraisers so appointed shall within 10 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 10 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall

be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

The Lessor agrees that (provided no default hereunder shall have occurred and be continuing) it will not sell such Units, or any of them, unless the Lessor shall have given the Lessee at least 30 business days' prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase such Unit or Units at the same price and on the same terms as specified in such notice. The foregoing right of the Lessee shall expire 180 days after the termination of this Lease and all renewals thereof.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

Section 14. Return of Units Upon Expiration of Term. The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks as the Lessor may designate, or, in the absence of such designation as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months, the storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to

the Lessor pursuant to this Section 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction applicable to equipment of like age and type. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. In the event any Unit is not assembled, delivered and stored, as hereinabove provided within 60 days after such termination, the Lessee shall pay to the Lessor for each day thereafter an amount equal to .030768% of the Purchase Price of such Unit.

Section 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation, any amendment or supplement hereto or thereto and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

Section 16. Federal Income Taxes. The Beneficiary, as the beneficial owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (herein called the Code), to an owner of property, including, without limitation, the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code based on the Purchase Price of the Units, utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with Section 167(m) of the Code employing the double declining balance method of depreciation, switching to the sum-of-the-years-digits method when most beneficial to the Beneficiary

utilizing the half-year or modified half-year convention as provided in Reg.Sec. 1.167(a)-11(c) (2) and taking into account an estimated gross salvage value of 10% of the aggregate cost of the Units to the Builder ("Builder's Cost") which will be reduced by 10% of the Builder's Cost as provided in Section 167(f) of the Code (such deduction being herein called the ADR Deduction), deductions with respect to interest payable under the Security Documentation pursuant to Section 163 of the Code (such deduction being herein called the Interest Deduction), and the 10% investment credit in 1976 (herein called the Investment Credit) with respect to the aggregate Builder's Cost of the Units pursuant to Section 38 and related sections of the Code.

The Lessee represents and warrants that at (i) the time Beneficiary becomes the beneficial owner of any Unit, such Unit will constitute "new Section 38 property" as defined in Section 48(b) of the Code, and at the time the Beneficiary becomes the beneficial owner of such Unit, no portion thereof shall have been used by any person so as to preclude the "original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Beneficiary, and (ii) at all times during the term of this Lease, such Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code, and will not be used predominantly outside the United States within the meaning of said Section 48(a) (including any exception thereto). Upon the Lessee's acceptance of any Unit, such Unit shall have an economically useful life of at least nineteen (19) years after the commencement of the term of this Lease and such Unit can reasonably be expected to have a fair market value at the end of the original term of this Lease of at least 20% of the Purchase Price of such Unit. If the Beneficiary shall (except as herein below provided) fail to have the right to claim or shall lose the right to claim or shall suffer a disallowance of or shall be required to recapture or shall be disallowed the full use of the Investment Credit, the ADR Deduction (without regard to the applicable gross salvage value), or the Interest Deduction, except for any inability to obtain or to have the right to claim such Investment Credit or ADR Deduction or Interest Deduction for any Unit because of the occurrence of any of the following events:

(a) A Casualty Occurrence shall occur with respect to such Unit, whereby the Lessee is required by the terms hereof to pay, and shall pay in full, the appropriate Casualty Value, provided, however, that the indemnities set forth in this Section 16 shall continue in effect, notwithstanding such payment of Casualty Value, with respect to the period prior to the date of payment of said Casualty Value;

(b) At any time while such Unit is leased hereunder, and while no Event of Default under this Lease has occurred and is continuing unremedied (without the written consent of the Lessee), the Lessor or the Beneficiary shall voluntarily or (except in a case constituting a Casualty Occurrence) involuntarily transfer its interest

to such Unit to anyone or shall otherwise dispose of any interest in the Unit or shall reduce its interest in the profits from the Unit, and such transfer, disposal or reduction by the Lessor or the Beneficiary shall be the cause of the Lessor or the Beneficiary's inability to obtain or to have the right to claim or of the disallowance of such Investment Credit, or ADR Deduction or Interest Deduction;

(c) The Beneficiary shall fail to claim the Investment Credit or the ADR Deduction or the Interest Deduction in its income tax returns for the appropriate year or shall fail to follow the proper procedure in claiming the same, and such failure to claim or to follow such procedure, as the case may be, shall preclude the Beneficiary from claiming the Investment Credit or ADR Deduction or Interest Deduction;

(d) The Beneficiary shall fail to have sufficient income to fully benefit from the Investment Credit or ADR Deduction or Interest Deduction;

(e) After a written request to conduct such contest has been given by the Lessee to the Beneficiary at least 20 days prior to the time when Beneficiary must act, the Beneficiary (i) shall fail to take timely action in contesting the claim made by the Internal Revenue Service with respect to the disallowance of any of the Investment Credit or the ADR Deduction or Interest Deduction, and failure to take such action in a timely manner shall preclude the right of the Beneficiary to contest such claim, or (ii) shall fail to take action to contest any such claim; or the Beneficiary shall, without the prior written consent of the Lessee, release, waive, compromise or settle any action or proceeding taken in accordance with this subparagraph (e); provided, however, that the Beneficiary's responsibility to take or refrain from taking any action pursuant to this subparagraph (e) as a precondition to the payment of any indemnity provided by this Section 16 is expressly subject to the Lessee's agreement to indemnify the Lessor and the Beneficiary from any loss, harm or liability arising as a result of the taking or refraining from taking of such action and to the Lessee's agreement to pay all of the Lessor's and the Beneficiary's costs and expenses, including legal expenses, resulting from taking or refraining from taking any such action; or

(f) Any other act solely of the Beneficiary which directly causes the loss of any of the Investment Credit, the ADR Deduction or the Interest Deduction; provided, however, that the execution and delivery of this Lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein in accordance with the terms of this Lease and such other

documents shall not be deemed to have caused the loss of such Investment Credit, the ADR Deduction or Interest Deduction under this subparagraph (f);

then the Lessee shall pay the Lessor as supplemental rent an amount which, after deduction of all taxes required to be paid by the Beneficiary and the Lessor in respect of the receipt thereof under the laws of the United States or any state, city or other political subdivision thereof or any foreign government (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of any other such taxes), in the reasonable opinion of the Beneficiary, will cause the net after-tax return on the Beneficiary's investment in the Units to be equal to the net after-tax return on such investment which the Beneficiary would have realized had the Beneficiary had the full tax benefit of all of the Investment Credit and all of the ADR Deduction and all of the Interest Deduction described in this Section (after taking into account the amount of any interest or penalties which may be assessed against the Beneficiary in connection with the failure to obtain or have the right to claim, or the disallowance of, such Investment Credit or such ADR Deduction or Interest Deduction). The intent of this indemnity is to provide the Beneficiary the same after-tax rate of return as if no such tax benefits had been lost or disallowed. Such supplemental rent shall be payable concurrently with other rent required under this Lease and shall commence on the rental payment date next succeeding the disallowance of the Beneficiary's right to claim or to have the benefit of the Investment Credit or the ADR Deduction or the Interest Deduction contemplated by this Section. In the event any supplemental rent is required to be paid pursuant to this Section, the Casualty Values set forth in Schedule B hereto shall be revised as necessary to preserve the net after-tax return on the Beneficiary's investment in the Units as provided herein above. Notwithstanding anything herein to the contrary, should the Lessee be required to and in fact does make any payment pursuant to the tax indemnification provisions of this Section 16, Lessee shall have the right to determine the forum in which to contest or otherwise challenge the loss or disallowance requiring such payment.

Section 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals or other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 12% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

Section 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at the address set forth in Item 3 of Schedule B hereto;

(b) if to the Lessee, at Two Embarcadero Center, San Francisco, California 94111, Attention: President;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to ITEL Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, Attention: Contract Administration and to Manufacturers Hanover Trust Company, 350 Park Avenue, New York, New York 10022, Attention: J. Nicholas Murd.

Section 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

Section 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Utah; provided, however, that the parties shall be entitled to all right conferred by Section 20c of the Interstate Commerce Act. It is the intent of the parties hereto that this Lease be a true lease and not a security agreement.

Section 22. Lessor and Beneficiary. Whenever the term "Lessor" is used in this Lease it shall include the Beneficiary and any assignee of the Beneficiary and, where the context so requires, shall refer only to the Beneficiary.

Section 23. Notice of Default to Apache. Whenever a notice of default is given to Lessee pursuant to this Lease, Lessor agrees to give a copy of said notice to Apache in the same manner and method as said notice is given to Lessee hereunder, to be sent to Apache at the following address:

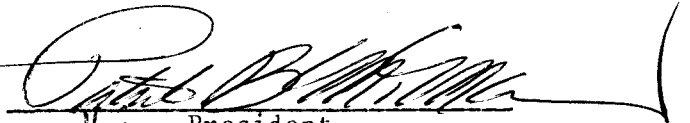
The Apache Railway Co.
Drawer E
Snowflake, Arizona

IN WITNESS WHEREOF, the parties hereto have executed or caused
this instrument to be executed as of the date first above written.

SSI RAIL CORP.

[Corporate Seal]

By


Vice President

Attest:


Secretary

FIRST SECURITY BANK OF UTAH, N.A.,
not in its individual capacity but
solely as Trustee,

[Seal]

By


Authorized Officer

Attest:



STATE OF CALIFORNIA,)
) ss.
CITY AND COUNTY OF SAN FRANCISCO.)

On this 30th day of July 1976, before me personally appeared Patrick ~~W. M. M.~~ to me personally known, who, being by me duly sworn, says that he is the President of SSI RAIL CORP., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Terry L. Russell
Notary Public

[Notarial Seal]

My Commission Expires:



STATE OF UTAH,)
) ss.
COUNTY OF SALT LAKE.)

On this 2nd day of August 1976, before me personally appeared Robert S. Clark, to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.


Notary Public

[Notarial Seal]

My Commission Expires: 11-18-79

SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's or Sublessee's Road Numbers (Both Inclusive)</u>
70-ton box cars (FMC Corporation Specification #17774, revision #3 dated June 9, 1976)	100	APA 1850-1949 *
100-ton box cars (FMC Corporation Specification #17775)	100	APA 1700-1799 *

* Road Number of The Apache Railway Co.

SCHEDULE B TO LEASE

Item 1:	<u>Date</u>	<u>Percentage</u>	<u>Date</u>	<u>Percentage</u>
	September 1, 1976	108.32	March 1, 1984	76.33
	December 1, 1976	109.45	June 1, 1984	74.93
			September 1, 1984	73.50
	March 1, 1977	110.80	December 1, 1984	72.03
	June 1, 1977	111.22		
	September, 1977	111.99	March 1, 1985	70.54
	December 1, 1977	112.72	June 1, 1985	69.03
			September 1, 1985	67.49
	March 1, 1978	113.43	December 1, 1985	65.92
	June 1, 1978	113.69		
	September 1, 1978	113.54	March 1, 1986	64.31
	December 1, 1978	113.31	June 1, 1986	62.69
			September 1, 1986	61.05
	March 1, 1979	113.04	December 1, 1986	59.37
	June 1, 1979	112.81		
	September 1, 1979	112.53	March 1, 1987	57.67
	December 1, 1979	107.05	June 1, 1987	55.94
			September 1, 1987	54.20
	March 1, 1980	106.39	December 1, 1987	52.42
	June 1, 1980	105.68		
	September 1, 1980	104.84	March 1, 1988	50.62
	December 1, 1980	103.89	June 1, 1988	48.80
			September 1, 1988	46.96
	March 1, 1981	102.87	December 1, 1988	45.09
	June 1, 1981	101.83		
	September 1, 1981	100.76	March 1, 1989	43.19
	December 1, 1981	93.66	June 1, 1989	41.28
			September 1, 1989	39.34
	March 1, 1982	92.51	December 1, 1989	37.39
	June 1, 1982	91.35		
	September 1, 1982	90.15	March 1, 1990	35.40
	December 1, 1982	88.92	June 1, 1990	33.39
			September 1, 1990	31.37
	March 1, 1983	87.65	December 1, 1990	29.31
	June 1, 1983	86.37		
	September 1, 1983	85.05	March 1, 1991	27.24
	December 1, 1983	77.71	June 1, 1991	25.13
			September 1, 1991	20.00

Notes A: The above schedule includes Investment Tax Credit
Recapture

Note B: The above schedule does not include any loan penalty
for prepayment from either debt or equity participants

Item 2:

Anniversary of
Delivery and
Acceptance

Applicable Percentage Allowed

Third	20.0000
Fifth	13.3333
Seventh	6.6667

Item 3: First Security Bank of Utah, N.A.
79 South Main Street
Salt Lake City, Utah 84110
Attention: Trust Department, Corporate Division